

AMENDED IN ASSEMBLY MARCH 16, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 314

Introduced by Assembly Member Waldron

February 12, 2015

An act to amend ~~Section 1813~~ *Sections 1826 and 1827.5* of the Probate Code, relating to conservatorship.

LEGISLATIVE COUNSEL'S DIGEST

AB 314, as amended, Waldron. ~~Conservatorship.~~ *Limited conservatorship: developmentally disabled persons.*

Existing law establishes a procedure for creating a limited conservatorship for a person with developmental disabilities. Under existing law, that procedure requires, among other things, that a court investigator conduct interviews of a proposed conservatee and others, review allegations in the petition to create the conservatorship, determine whether the proposed conservatee is incapable of completing an affidavit of voter registration, and report the results of the investigation to the court.

This bill would provide that these requirements do not apply to a procedure to establish a limited conservatorship for a person with developmental disabilities when the proposed conservator is a parent of the proposed conservatee.

Existing law requires that within 30 days after the filing of a petition for limited conservatorship of a person with developmental disabilities, the proposed limited conservatee, with his or her consent, be assessed at a regional center. Existing law requires the regional center to submit a written report of its findings and recommendations resulting from that assessment to the court.

This bill would instead authorize, rather than require, the proposed limited conservatee, with his or her consent, to be assessed at a regional center for those purposes. The bill would require the regional center, with the consent of the proposed limited conservatee, to submit a written report containing findings and recommendations to the court without an assessment of the proposed conservatee if the proposed conservatee has been a client of the regional center for a period of time sufficient for the center to provide those findings and recommendations without the need for an additional assessment, and if the proposed conservator is a parent of the proposed conservatee.

~~Existing law prohibits the spouse of a proposed conservatee from petitioning for the appointment of a conservator for a spouse or from being appointed as conservator of a person or estate of the proposed conservatee unless the petitioner alleges in the petition for appointment as conservator, and the court finds, that the spouse is not a party to an action or proceeding against the proposed conservatee for legal separation of the parties, dissolution of marriage, or adjudication of nullity of their marriage.~~

~~This bill would make technical, nonsubstantive changes to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1826 of the Probate Code is amended to
- 2 read:
- 3 1826. ~~Regardless~~ Except as provided in subdivision (t), and
- 4 regardless of whether the proposed conservatee attends the hearing,
- 5 the court investigator shall do all of the following:
- 6 (a) Conduct the following interviews:
- 7 (1) The proposed conservatee personally.
- 8 (2) All petitioners and all proposed conservators who are not
- 9 petitioners.
- 10 (3) The proposed conservatee's spouse or registered domestic
- 11 partner and relatives within the first degree. If the proposed
- 12 conservatee does not have a spouse, registered domestic partner,
- 13 or relatives within the first degree, to the greatest extent possible,
- 14 the proposed conservatee's relatives within the second degree.

1 (4) To the greatest extent practical and taking into account the
2 proposed conservatee's wishes, the proposed conservatee's relatives
3 within the second degree not required to be interviewed under
4 paragraph (3), neighbors, and, if known, close friends.

5 (b) Inform the proposed conservatee of the contents of the
6 citation, of the nature, purpose, and effect of the proceeding, and
7 of the right of the proposed conservatee to oppose the proceeding,
8 to attend the hearing, to have the matter of the establishment of
9 the conservatorship tried by jury, to be represented by legal counsel
10 if the proposed conservatee so chooses, and to have legal counsel
11 appointed by the court if unable to retain legal counsel.

12 (c) Determine whether it appears that the proposed conservatee
13 is unable to attend the hearing and, if able to attend, whether the
14 proposed conservatee is willing to attend the hearing.

15 (d) Review the allegations of the petition as to why the
16 appointment of the conservator is required and, in making his or
17 her determination, do the following:

18 (1) Refer to the supplemental information form submitted by
19 the petitioner and consider the facts set forth in the form that
20 address each of the categories specified in paragraphs (1) to (5),
21 inclusive, of subdivision (a) of Section 1821.

22 (2) Consider, to the extent practicable, whether he or she
23 believes the proposed conservatee suffers from any of the mental
24 function deficits listed in subdivision (a) of Section 811 that
25 significantly impairs the proposed conservatee's ability to
26 understand and appreciate the consequences of his or her actions
27 in connection with any of the functions described in subdivision
28 (a) or (b) of Section 1801 and identify the observations that support
29 that belief.

30 (e) Determine whether the proposed conservatee wishes to
31 contest the establishment of the conservatorship.

32 (f) Determine whether the proposed conservatee objects to the
33 proposed conservator or prefers another person to act as
34 conservator.

35 (g) Determine whether the proposed conservatee wishes to be
36 represented by legal counsel and, if so, whether the proposed
37 conservatee has retained legal counsel and, if not, the name of an
38 attorney the proposed conservatee wishes to retain.

39 (h) (1) Determine whether the proposed conservatee is not
40 capable of completing an affidavit of voter registration in

1 accordance with Section 2150 of the Elections Code and may be
2 disqualified from voting pursuant to Section 2208 of the Elections
3 Code.

4 (2) The proposed conservatee shall not be disqualified from
5 voting on the basis that he or she does, or would need to do, any
6 of the following to complete an affidavit of voter registration:

7 (A) Signs the affidavit of voter registration with a mark or a
8 cross pursuant to subdivision (b) of Section 2150 of the Elections
9 Code.

10 (B) Signs the affidavit of voter registration by means of a
11 signature stamp pursuant to Section 354.5 of the Elections Code.

12 (C) Completes the affidavit of voter registration with the
13 assistance of another person pursuant to subdivision (d) of Section
14 2150 of the Elections Code.

15 (i) If the proposed conservatee has not retained legal counsel,
16 determine whether the proposed conservatee desires the court to
17 appoint legal counsel.

18 (j) Determine whether the appointment of legal counsel would
19 be helpful to the resolution of the matter or is necessary to protect
20 the interests of the proposed conservatee in any case where the
21 proposed conservatee does not plan to retain legal counsel and has
22 not requested the appointment of legal counsel by the court.

23 (k) Report to the court in writing, at least five days before the
24 hearing, concerning all of the foregoing, including the proposed
25 conservatee's express communications concerning both of the
26 following:

27 (1) Representation by legal counsel.

28 (2) Whether the proposed conservatee is not willing to attend
29 the hearing, does not wish to contest the establishment of the
30 conservatorship, and does not object to the proposed conservator
31 or prefer that another person act as conservator.

32 (l) Mail, at least five days before the hearing, a copy of the
33 report referred to in subdivision (k) to all of the following:

34 (1) The attorney, if any, for the petitioner.

35 (2) The attorney, if any, for the proposed conservatee.

36 (3) The proposed conservatee.

37 (4) The spouse, registered domestic partner, and relatives within
38 the first degree of the proposed conservatee who are required to
39 be named in the petition for appointment of the conservator, unless

1 the court determines that the mailing will result in harm to the
2 conservatee.

3 (5) Any other persons as the court orders.

4 (m) The court investigator has discretion to release the report
5 required by this section to the public conservator, interested public
6 agencies, and the long-term care ombudsman.

7 (n) The report required by this section is confidential and shall
8 be made available only to parties, persons described in subdivision
9 (l), persons given notice of the petition who have requested this
10 report or who have appeared in the proceedings, their attorneys,
11 and the court. The court has discretion at any other time to release
12 the report, if it would serve the interests of the conservatee. The
13 clerk of the court shall provide for the limitation of the report
14 exclusively to persons entitled to its receipt.

15 (o) This section does not apply to a proposed conservatee who
16 has personally executed the petition for conservatorship, or one
17 who has nominated his or her own conservator, if he or she attends
18 the hearing.

19 (p) If the court investigator has performed an investigation
20 within the preceding six months and furnished a report thereon to
21 the court, the court may order, upon good cause shown, that another
22 investigation is not necessary or that a more limited investigation
23 may be performed.

24 (q) Any investigation by the court investigator related to a
25 temporary conservatorship also may be a part of the investigation
26 for the general petition for conservatorship, but the court
27 investigator shall make a second visit to the proposed conservatee
28 and the report required by this section shall include the effect of
29 the temporary conservatorship on the proposed conservatee.

30 (r) The Judicial Council shall, on or before January 1, 2009,
31 adopt rules of court and Judicial Council forms as necessary to
32 implement an expedited procedure to authorize, by court order, a
33 proposed conservatee's health care provider to disclose confidential
34 medical information about the proposed conservatee to a court
35 investigator pursuant to federal medical information privacy
36 regulations promulgated under the Health Insurance Portability
37 and Accountability Act of 1996.

38 (s) A superior court shall not be required to perform any duties
39 imposed pursuant to the amendments to this section enacted by

Chapter 493 of the Statutes 2006 until the Legislature makes an appropriation identified for this purpose.

(t) This section shall not apply to a proceeding to establish a limited conservatorship for a person with developmental disabilities when the proposed conservator is a parent of the proposed conservatee.

SEC. 2. Section 1827.5 of the Probate Code is amended to read:

1827.5. (a) ~~In the case of any~~ a proceeding to establish a limited conservatorship for a person with developmental disabilities, within 30 days after the filing of a petition for limited conservatorship, a proposed limited conservatee, with his or her consent, ~~shall~~ may be assessed at a regional center as provided in Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code. The regional center shall submit a written report of its findings and recommendations to the court. *If the proposed conservatee has been a client of the regional center for a period of time sufficient for the center to provide those findings and recommendations without the need for an additional assessment, and if the proposed conservator is a parent of the proposed conservatee, the regional center shall, with the consent of the proposed limited conservatee, submit the written report containing findings and recommendations to the court without an assessment of the proposed conservatee.*

(b) ~~In the case of any~~ a proceeding to establish a general conservatorship for a person with developmental disabilities, the regional center, with the consent of the proposed conservatee, may prepare an assessment as provided in Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code. If an assessment is prepared, the regional center shall submit its findings and recommendations to the court.

(c) (1) A report prepared under subdivision (a) or (b) shall include a description of the specific areas, nature, and degree of disability of the proposed conservatee or proposed limited conservatee. The findings and recommendations of the regional center are not binding upon the court.

~~In~~

(2) In a proceeding where the petitioner is a provider of board and care, treatment, habilitation, or other services to persons with developmental disabilities or a spouse or employee of a provider,

1 is not the natural parent of the proposed conservatee or proposed
2 limited conservatee, and is not a public entity, the regional center
3 shall include a recommendation in its report concerning the
4 suitability of the petitioners to meet the needs of the proposed
5 conservatee or proposed limited conservatee.

6 (d) At least five days before the hearing on the petition, the
7 regional center shall mail a copy of the report referred to in
8 subdivision (a) to all of the following:

9 (1) The proposed limited conservatee.

10 (2) The attorney, if any, for the proposed limited conservatee.

11 (3) If the petitioner is not the proposed limited conservatee, the
12 attorney for the petitioner or the petitioner if the petitioner does
13 not have an attorney.

14 (4) ~~Such other~~ *Other* persons as the court orders.

15 (e) The report referred to in subdivisions (a) and (b) shall be
16 confidential and shall be made available only to parties listed in
17 subdivision (d) unless the court, in its discretion, determines that
18 the release of the report would serve the interests of the conservatee
19 who is developmentally disabled. The clerk of the court shall make
20 provision for limiting disclosure of the report exclusively to persons
21 entitled thereto under this section.

22 **SECTION 1.** ~~Section 1813 of the Probate Code is amended to~~
23 ~~read:~~

24 ~~1813. (a) (1) The spouse of a proposed conservatee shall not~~
25 ~~petition for the appointment of a conservator for a spouse or be~~
26 ~~appointed as conservator of the person or estate of the proposed~~
27 ~~conservatee unless the petitioner alleges in the petition for~~
28 ~~appointment as conservator, and the court finds, that the spouse is~~
29 ~~not a party to an action or proceeding against the proposed~~
30 ~~conservatee for legal separation of the parties, dissolution of~~
31 ~~marriage, or adjudication of nullity of their marriage. However, if~~
32 ~~the court finds by clear and convincing evidence that the~~
33 ~~appointment of the spouse, who is a party to an action or~~
34 ~~proceeding against the proposed conservatee for legal separation~~
35 ~~of the parties, dissolution of marriage, or adjudication of nullity~~
36 ~~of their marriage, or has obtained a judgment in any of these~~
37 ~~proceedings, is in the best interests of the proposed conservatee,~~
38 ~~the court may appoint the spouse.~~

39 ~~(2) Prior to making this appointment, the court shall appoint~~
40 ~~counsel to consult with and advise the conservatee, and to report~~

1 to the court his or her findings concerning the suitability of
2 appointing the spouse as conservator.
3 (b) The spouse of a conservatee shall disclose to the conservator,
4 or if the spouse is the conservator, shall disclose to the court, the
5 filing of an action or proceeding against the conservatee for legal
6 separation of the parties, dissolution of marriage, or adjudication
7 of nullity of the marriage, within 10 days of the filing of the action
8 or proceeding by filing a notice with the court and serving the
9 notice according to the notice procedures under this title. Upon
10 receipt of the notice, the court may set the matter for hearing on
11 an order to show cause why the appointment of the spouse as
12 conservator, if the spouse is the conservator, should not be
13 terminated and a new conservator appointed by the court.